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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,237	06/05/2006	Karin Golz-Berner	101215-228	3867

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NEW YORK, NY 10022

EXAMINER

BUCKLEY, AUDREA

ART UNIT	PAPER NUMBER
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1617

MAIL DATE	DELIVERY MODE
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07/25/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/596,237	Applicant(s) GOLZ-BERNER ET AL.
	Examiner AUDREA BUCKLEY	Art Unit 1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/AJB/	/RICHARD SCHNIZER/ Primary Examiner, Art Unit 1635
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Continuation of 11. does NOT place the application in condition for allowance because: Applicant requests reconsideration of the rejection of claims 17, 20, 23, 24, 26, 30, and 31 under 35 U.S.C. 103(a) as being unpatentable over Stora in view of Zastrow as well as further reconsideration of dependent claims.

Applicant argues that it would have been outside the ordinary level of skill in the art to dilute the formulation of Stora's Example 1. Applicant argues that the proposed dilution would have rendered Stora unsuitable for its intended use. Applicant argues that the proposed dilution would not have lead to predictable results.

This argument has been fully considered but is not persuasive. First of all, Applicant asserts that the proposed dilution calculation is in error. This position has been fully considered but is not persuasive, particularly since Applicant has not shown how one would have calculated Applicant's "normalized" results. Regardless, it is noted that Applicant agrees that, regardless of method of dilution calculation (the Examiner's calculation, the calculation which Applicant asserts is the Examiner's calculation (top of page 7 of Remarks), or Applicant's calculation (middle of page 7 of Remarks)), the values still theoretically fall within the claimed composition. In view of this, it is clarified that the Examiner's position was and is that it would have been within the skill of the ordinary artisan to dilute a formulation with water while (1) maintaining proportional quantities of the non-water components and (2) retaining the properties (i.e., perfume/fragrance functionality) of the formulation components, for the reasons of record. Applicant's arguments to the contrary appear to be speculative rather than evidenciary. For instance, Applicant speculates that "the dilution of Stora's formulation would likely render Stora unsuitable for its intended use" (see page 7 of Remarks, last paragraph, second line). It is the Examiner's position that the principle of operation would not have changed upon dilution since a known perfume would still act as a perfume even when less concentrated. Similarly, Applicant speculates that "due to the change in refractive indices, the composition is unlikely to be transparent" (see page 8 of Remarks, first full paragraph, line 9). In reply, Applicant's argument is not persuasive since it is based on an alleged mere likelihood; further, it is maintained that transparency is a relative characteristic which may be evaluated along a continuum. As such, Applicant has not shown that the proposed change (i.e., dilution) would have resulted in a completely non-transparent product. Finally, Applicant speculates that the proposed dilution would not allow the artisan to reasonably predict the formation of a stable emulsion since Stora has "likely" taught a maximum water content that would ensure a stable emulsion (see page 9 of Remarks, second full paragraph). In reply, this position is not persuasive because Applicant's conclusion does not appear to be based on facts, and Applicant's assertion that "there are inherent uncertainties when diluting..." is not supported in a meaningful way so as to disqualify the cited references. As such, the rejections of record are maintained.